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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,192	03/05/2007	Marc Husemann	101769-360-WCG	3572
27386	7590	05/11/2010	EXAMINER	
GERSTENZANG, WILLIAM C. NORRIS MC LAUGHLIN & MARCUS, PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022			FIGUEROA, JOHN J	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			05/11/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/581,192	HUSEMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John J. Figueroa	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 February 2010.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.  
 4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3 and 6-13 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/01/2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election with traverse of polyester as the species to be examined for the thermoplastic polymer in the first layer of the pressure-sensitive adhesive ('psa') in the reply filed on February 8, 2010 (to the restriction requirement of 11/09/2009) is hereby acknowledged.
2. The traversal is on the ground(s) that the search would not be burdensome to the Examiner. This is not found persuasive because the search for multilayered psa articles containing a layer comprising each of the various claimed thermoplastic polymer species requires searching combinations of numerous layered psa articles having at least one of the several thermoplastic polymeric species in a first layer in combination with the recited second polyacrylate psa layer. These numerous multilayered psa articles to be analyzed are further present in many distinct technologies. Consequently, searching all the possible psa articles having a thermoplastic polymer layer of each of the recited polymeric species in combination with the second poly(meth)acrylate layer (as recited in the present claims) within a large variety of technologies would indeed be a serious burden to the Examiner.
3. Accordingly, claims 1-13 are pending. Claims 1-3 and 6-13 have been examined in the instant action whereas claims 4 and 5 have been withdrawn as drawn to a non-elected species but remain in the current application.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. The claim is indefinite because the recited chemical structure formula for the (meth)acrylic esters depicts the second carbon as having five bonds. For purposes of this action, Examiner assumes that there is no hydrogen directly attached to said second carbon.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3 and 6-13 are rejected under 35 U.S.C. 102(b) as being anticipated by European Patent Office 1 308 492 A1 to Schumann et al. (attached to this action).

For purpose of this Office action, Examiner is relying on the corresponding United States patent application, namely USPN 6,958,186 B2 to Husemann et al., hereinafter ‘Husemann’.

Husemann discloses an psa tape comprising at least a three-layered tape structure (A, B, and C with the layer sequence ABC), wherein layer A is a heat activatable adhesive having an activation temperature  $T_A$  of at least +30°C; layer B is a crosslinked polyurethane carrier material; and layer C is a polyacrylate psa having a static glass transition temperature  $T_{G,C}$  of not more than +15°C. (Abstract; col. 2, lines 15-53; Figure 1)

Husemann discloses that the adhesive or psa for layer A can contain a polyester, ethylene/vinyl acetate and/or a polyamide. (Col. 5, lines 27-33) Layer C preferably contains a polyacrylate composed of a polymer having a monomers c1) that contains from 79 to 100% by weight of acrylates; methacrylates; and/or their free acids with the following formula  $\text{CH}_2=\text{C}(\text{R}_3)(\text{COOR}_4)$ , where  $\text{R}_3$  is H or CH, and  $\text{R}_4$  is H or alkyl chains having from 1 to 30 carbon atoms. (Col. 8, lines 1-11) A further component that can be added to this (meth)acrylate monomer mixture (monomer c2)) comprises up to 30% by weight of olefinically unsaturated monomers containing functional groups. (Col. 8, lines 12-38)

Husemann also discloses several processes for forming the psa multilayered tape including a sample wherein the acrylate-containing psa may be applied from solution to the carrier material or from the melt, wherein the solvent is preferably taken off under reduced pressure in a concentrating extruder. (Col. 14, lines 7-16) The

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(meth)acrylate-containing layer can further be crosslinked on the carrier layer with, for example, a photoinitiator or electron beam. (Col. 14, lines 1-58) In addition, the various layers, including primer coat layers, of the psa multilayered tape article can be applied by an extrusion or co-extrusion process. (Col. 7, lines 60-67) The adhesives can be applied directly, by the indirect transfer method, or by co-extrusion with the polyurethane carrier from solution, dispersion or the melt; wherein the two adhesives from layer A or C are applied to release paper or release film, dried where appropriate and crosslinked, is introduced and is coated/laminated in the desired thickness with a liquid polyurethane composition with the assistance of the two-component mixing technique. (Col. 7, lines 11-20 and lines 45-54) Finally, the adhesive tape thus produced is wound up in a winding station, in the course of which at least one of the release papers or release films can be removed. (Col. 7, lines 45-59)

Thus, the present claims are anticipated by Husemann.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Figueroa whose telephone number is (571)272-8916. The examiner can normally be reached on Monday-Thursday 8:00-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John J. Figueroa/  
Examiner, Art Unit 1796

JJF/JJS